

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 11 MAR 1988

APPLICATION NO

964

/ 87(F)

W.P. NO.

Applicant

Shri M.S. Sreekantaiah

v/s

Respondent

The Supdt. of Post Offices, Hassan & another

To

1. Shri M.S. Sreekantaiah
C/o Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050
3. The Superintendent of Post Offices
Hassan Division
Hassan
4. The Director General
Postal Services Board
Sanchar Bhavan
Sansad Marg
New Delhi - 110 001
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

11/3/88
Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY/EXERCISE ORDER~~
passed by this Tribunal in the above said application on 4-3-88.

AP/
SECTION OFFICER
~~DEPUTY REGISTRAR~~
(JUDICIAL)

Encl : As above
o/c

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THE 4th DAY OF MARCH 1988.

BEFORE

THE HON'BLE MEMBER(A) SHRI L.H.A. REGO

APPLICATION NO. 964 OF 1987(F)

Sri M.S. Sreekantaiah
S/o M.K. Satyanarayana Sastry,
aged about 37 years,
Alur Taluk, Hassan District.

Applicant

(By Sri M. Raghavendra Achar, Adv. for the applicant)

-vs.-

1. The Superintendent of Post Offices,
Hassan Division, Hassan.

2. The Director General,
Postal Services Board,
Sansad Marg, Sanchar Bhavan,
NEW DELHI. ..

Respondents.

(By Shri M. Vasudev Rao, Addl. Standing Counsel for
Central Government, for respondents)

This application coming on for hearing, the
HON'BLE MEMBER(A) made the following:

ORDER

In this application, filed under Section 19
of the Administrative Tribunals Act, 1985, the
applicant prays that the Order dated 2-5-1984
(Annexure 'B') (erroneously dated as 4-4-1984 in
the application), by the Post Master General,
Bangalore, (PMG, for short), and the Order dated



26-3-1987 (Annexure 'C') by respondent(R) 1, be set aside, with a direction to the respondents, to fix the pay of the applicant, on par with Sri N.K. Manjunathaiah, who is junior to him in his cadre.

2. The following facts are relevant: The applicant entered service in the Postal Department as a Postman on 30-3-1972, in the pay scale of Rs.75-1-85 (Old Scale), along with Sri N.K. Manjunathaiah. He appeared on 25-10-1981, for the examination prescribed for promotion, to the post of Postal Assistants/Sorting Assistants and was declared successful in that examination, according to Annexure 'A' dated 30-12-1981 by the P.M.G.

3. Juxtaposed below in a tabular statement, are the relevant service particulars of the applicant vis-a-vis Sri N.K. Manjunathaiah, which show at a glance, their career advancement and fixation of pay, in respective posts, under the relevant provisions of the Fundamental Rules ('FR', for short):

S.No.	Particulars	Shri M.S.Sreekan- tiah (Applicant).	Shri N.K.Manju- nathaiah	
	Date	Pay p.m. (Rs.)	Date	Pay p.m. (Rs.)
1.	Entry in the Postal Deptt. as Postman in the Pay scale of Rs.75-1-85 (Old) revised to Rs.210-4-250-EB-5-270.	30-3-1972	75/- (Old Scale)	30.3.1972 75/- (Old- Scale)
2.	Promotion as Sorting Postman or Mail Over-seer.	30-10-1980	266/-	30-10-1980 266/-

contd.....

PL

(1)	(2)	(3)	(4)	(5)	(6)
iii) Promotion as Time-Scale Clerk or Postal Assistant.	22.5.1982	276/- (under FR-22C).	17-5-1983 (Under FR 22(a))	276/- (i).	
		1-10-1983 (under FR 22C)	284/- (under FR 22C)	1-10-1983 (under FR 22C)	292/- (under FR 22C)

4. The applicant states, that though he was promoted to the post of Time Scale Clerk or Postal Assistant, on 22-5-1982, ~~than~~ earlier than Sri N.K. Manjunathaiah, who was promoted to this cadre on 17-5-1983, his pay in this post was fixed at Rs.276 per mensem, with effect from 1-10-1983 under FR 22-C, while that of Shri Manjunathaiah, was fixed higher at Rs.292/- per mensem from that very date. The applicant submitted a written representation thereon to R-1, on 27-12-1984, but the same was turned down by him under his letter dated 26-3-1987(Annexure-C) informing him, that his case had already been examined in detail and decided as long back as on 2-1-1981 and therefore, his request could not be allowed at this belated stage in 1987.

5. As regards the representation of the applicant to the P.M.G. to step up his pay on par with Sri Manjunathaiah, the PMG had informed R-1, on 2-5-1987(Annexure-B) that the applicant had not exercised option in terms of para-2(b) of the Office Memorandum (OM) dated 26-9-1981 of the Ministry of Home Affairs(Department of Personnel and Administrative Reforms), Government of India, within one month from the date of his promotion to the higher cadre viz., that of Postal Assistant



and that there was no provision under the existing Rules to step up the pay in such cases. Aggrieved, the applicant has approached this Tribunal for redress.

6. Shri M.R.Achar, learned Counsel for the applicant, alleged, that the respondents did not intimate his client, while issuing ~~the~~ orders of his promotion, to the post of Postal Assistant, that he was required to exercise option in terms of the instructions contained in the aforesaid OM dated 26-9-1981, from the Union Ministry of Home Affairs, and that his client was not aware of these instructions. His client could not therefore exercise the required option and as a result, has been put ~~at~~ to considerable financial loss, in regard to fixation of his pay. He contended, that the instructions contained in the above OM dated 26-9-1981, were antithetical to the very pay-structure of the concerned cadre in the Postal Department.

7. Furthermore, he pointed out, that the Union Ministry of Home Affairs had examined in depth, the doubts raised by various Departments in regard to the application of instructions contained in its aforementioned OM dated 26-9-1981 and had inter alia clarified these doubts as under, by its OM dated 8-2-1983, in so far as they ^{do} were relevant to the instant case:

"OFFICE MEMORANDUM"

Sub: Orders issued for option of date for fixation of pay on promotion - clarification regarding.

The undersigned is directed to refer to the provisions contained in this Department OM No.F.7/1/80-Estt.P.I.

dated

dated 26th Sept. 1981 on the above subject, and the say that doubts have been raised by various Departments on the application of the above provisions in different cases. The various points have been examined in consultation with the Ministry of Finance. The position is clarified as follows:

<u>Point of doubt</u>	<u>Clarification</u>
1. Whether the option is to be exercised by the employee on promotion or it is to be obtained by the Admn. from the employee concerned.	In the order promoting the Govt. servant, <u>it may be</u> mentioned that he has to exercise the option within one month. On his promotion, the pay should be first fixed under FR 22 and in case he exercises an option in terms of para 2(b) of O.M. dt. 26/9/81 within the prescribed period of one month, his pay should be refixed straightaway under FR 22(a)(i) with effect from the date of his promotion and then under FR 22 C only with effect from the date of accrual of next increment in the feeder post."

8. Shri Achar, stated, that his client had submitted his written representation to R-1, on 27-12-1984, (not too distant from the clarification given by the Union Ministry of Home Affairs, in its above OM dated 8-2-1983) to refix his pay on par with Shri Manjunathiah his junior, but it was summarily turned down by him on 26-3-1987 (Annexure-C) as long as after nearly two years and three months. He said, that R-1 did not take a sympathetic view in giving his client the benefit of the instructions given by the Union Ministry of Home Affairs in its aforesaid Memo dated 8-2-1983, and this had caused him undue financial hardship.



9. Rebutting the contentions of Shri Achar, Shri M. Vasudev Rao, learned Counsel for respondents stated, that while Sri N.K. Manjunathaiah was vigilant enough to exercise the option in terms of the aforesaid OM dated 26-9-1981, the applicant in contrast, was remiss and therefore he had to suffer the consequence on account of his own default. He clarified, that the instructions contained in the above O.M. dated 26-9-1981, were duly notified to all concerned by publication on the notice board and the fact that Sri Manjunathaiah was aware of these instructions in itself revealed, that the applicant could not feign ignorance of the same. The representation of the applicant, he said, was duly examined by R-1, the P.M.G. as well R-2 and was rejected on the ground, that the applicant had failed to exercise the option in due time and that he could not be allowed to do so, at a far too belated stage and this was conveyed to the applicant by R-1, on 26-3-1987.

10. I have examined the rival contentions carefully and the material placed before me. The fate of this application hinges mainly on the alleged default of the applicant ~~in not~~ exercising his option within the period of one month from the date of his promotion to the post of Postal Assistant, as prescribed in the aforementioned O.M. dated 26-9-1981. This Memorandum reads thus:

"A reference is invited to the existing provisions regarding the manner of fixation of pay of a Central Government employee on his promotion to the next higher grade/post under F.R. 22-C. A

point

point was raised by the Staff Side in the 25th Ordinary Meeting of the National Council (JCM) that under the above provisions promotion of a junior person to the higher post, after accrual of his increment in the lower post, gives rise to an anomaly in pay of a person senior to him who though promoted earlier had not drawn at any time pay less than that of his junior in the lower post.

2. The demand of the Staff Side has been considered by this Department in consultation with the Ministry of Finance and the matter was also discussed in the National Council (JCM). It has been decided that in order to remove the aforesaid anomaly the employee may be given an option for fixation of his pay on promotion as under:-

- (a) either his initial pay may be fixed in the higher post on the basis of F.R. 22-C straightway without any further review on accrual of increment in the pay scale of the lower post, or
- (b) his pay on promotion, may be fixed initially in the manner as provided under F.R. 22(a)(i) which may be refixed on the basis of the provisions of F.R.22-C on the date of accrual of next increment in the scale of pay of the lower post.

If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months qualifying service from the date pay is refixed on the second occasion.

Option may be given within one month of the date of promotion. Option once exercised shall be final.

3. In the event of an officer refusing promotion even after the above concessions

become



become available, he would be debarred from promotion for a period of one year instead of six months, as at present.

4. These orders take effect from the 1st May, 1981."

11. The applicant is seen to have submitted his written representation on 27-12-1984 to R-1, to refix his pay on par with Shri Manjunathaiah. But, as stated earlier, it was summarily rejected by R-1, on 26-3-1987 (Annexure-C), as long as after 2 years 3 months. In its O.M dated 8-2-1983, the Union Ministry of Home Affairs is seen to have taken a considerate view of the various difficulties encountered by the concerned Departments in implementing the instructions contained in its earlier O.M. dated 26-9-1981 in regard to fixation of pay. The Ministry had at the end of its O.M. dated 8-2-1983, directed, that the clarificatory instructions contained therein, be brought to the notice of all Officers concerned, for their guidance. This instructions in this O.M. must have taken some time to trickle down to the lowest level. It is clear from the excerpt of these instructions relevant to the instant case, -vide para 7 supra - that the Union Ministry of Home Affairs had taken a realistic view and felt the need to mention in the Order of promotion, that on promotion, the official is ~~should~~ required to exercise the required option within a period of one month as prescribed in the O.M. dated 26-9-1981. The respondents should have taken a realistic and considerate view on the representation of the applicant, in the context of these clarificatory instructions, issued by the Union Ministry of Home Affairs, and should have given the applicant

the benefit of exercising his option in regard to fixation of pay in the light of these instructions.

12. In the case of a claim for arrears of salary, the period of limitation would be that laid down in Article 102 of the Indian Limitation Act, 1908 (vide 1961(1) S.C.R. 886 - MADHAV LAXMAN VAIKUNTHE v. THE STATE OF MYSORE). Accordingly, an employee can claim arrears of salary which fell within 3 years of the date of filing the suit/application.

13. In the light of the above, ~~observation~~, I make the following order:

ORDER

- (a) The impugned Orders contained in Letter dated 25-8-1984 (Annexure-B) and in Letter dated 26-3-1987 (Annexure-C), are hereby set aside.
- (b) The applicant be directed to exercise within the prescribed period, his option in terms of O.Ms. dated 26-6-1981 and 8-2-1983 of the Ministry of Home Affairs (Department of Personnel and Administrative Reforms), in regard to fixation of his pay.
- (c) His pay be refixed with due regard to the option so exercised by him.
- (d) The applicant be granted all arrears, consequent to revision of his pay as above, subject to para 12 supra.

rd (e) This



(e) This order ^{may} be given effect to,
within a period of 3 months from
the date of its receipt.

14. Application is disposed of in the
above terms. No order as to costs.

Sd/-

(L.H.A. REGO) 4.2.88
MEMBER(A)

TRUE COPY



11/3/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE BENCH
BANGALORE

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